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REPORTS

NOTES OF THE WEEK

The Problem of the Young Prostitute

It has been said that prostitution is the one trade in which the youngest can earn the largest reward, and this is one reason why girls with no background of wholesome family life and parental example are tempted to choose the gay life of easy money and fine clothes instead of honest hard work. Preventive and reclaiming work among them is difficult and discouraging, but not always a failure if it can intervene early.

At a conference under the auspices of the Howard League, Mr. C. R. Hewitt, well-known as author, journalist, broadcaster and social worker, who has also had experience as a police officer, suggested that girls and young women could be prevented from living a life of prostitution if the influence of social work could be applied early enough. In his opinion the best way to secure this would be to give the juvenile court jurisdiction over girls and young women up to the age of 21, and thus bring the resources of the courts and the probation service to bear at an early stage.

Any proposal from Mr. Hewitt deserves careful consideration, but we doubt the practicability of this one. It is true, as he pointed out, that many of these girls are immature, but it is also true that some of them are developed beyond their years, and we should hesitate to say they were fit subjects for the juvenile court. It would be difficult to confine the jurisdiction to girls charged with particular offences, or even to one sex, and to introduce all defendants under 21 would be a drastic change in the atmosphere and powers of the juvenile courts. It may also be pointed out that the probation service is as much available in the adult court as in the juvenile court and that there are plenty of magistrates sitting in adult courts who are keen on the social work of the courts.

Perhaps Mr. Hewitt may have had in mind a possible extension of the age in care or protection cases. At present some of the young prostitutes and girls who are in danger of joining the ranks of the prostitutes are brought to the juvenile court as in that category. Whether it is suitable to treat a young woman who is near attaining her majority as in need of protection such as is given to those under 17 is a question upon which there would almost certainly be strong disagreement.

What is true beyond all doubt is that, as Mr. Hewitt and Miss W. J. Woodward, a speaker with long experience as a probation officer both said, the sooner the social worker can intervene, if possible before a girl has been charged, the more hopeful the outlook. Their opinion was supported by the weight of the view of Dr. T. C. N. Gibbens, a well-known psychiatrist.

There need not be despair of reclaiming prostitutes. It has been, and it will continue to be accomplished, but it is one of the most perplexing tasks of social workers. We believe that if probation officers are to undertake it with any real hope of success, they must be given opportunity to devote a great amount of time and thought to each case, and this they cannot do if that case is one of a heavy load.

Detention Centres

A case reported in the *Liverpool Daily Post* concerned a young man whom the magistrate wished to send to a detention centre for three months, but who could not be received there for want of a vacancy. The magistrate therefore imposed a fine.

It is difficult to see what other course was appropriate in the circumstances, although it seems a pity that the treatment which a court considered proper could not be ordered. We are aware that opinions are still divided about the success of the existing detention centres, and that in some quarters it is being suggested that no more should be established until their value can be appraised after due inquiry. What we should have thought to be the real question is not whether there should be detention centres, but whether the present system of running them is sound or is in need of drastic alteration—a matter upon which we do not feel able to offer any opinion. That there is a need for some kind of institution stricter than an approved school but not providing for long-term detention as in borstal institutions is, we think, undoubted. There

is also a need for such an institution for some of those offenders who are above approved school age who might be sent to prison if there were no detention centres. There was a constant demand on the part of many magistrates for such institutions until the Criminal Justice Act, 1948, made provision for them, and if they were discontinued there would almost certainly be a renewed demand for somewhere to send young offenders for short term training under strict discipline.

We always think it unfortunate if an offender cannot be dealt with suitably for want of a vacancy in the right place. The court can hardly remand him repeatedly until a vacancy occurs, and has to adopt what it considers a second-best course.

A Question of Evidence

There is in the *East Anglian Daily Times* of October 16 a report of proceedings against a man for dangerous driving. It appears to have been a bad case of its kind, the driver in question having been following and endeavouring to keep up with another car the driver of which failed to negotiate a bend, crashed into a brick wall and was killed. It was not suggested that the driver summoned was in any way responsible for the accident, but the allegation against him was that he was driving at a fast and dangerous speed, taking blind corners in a reckless manner. The two cars passed certain premises so fast that the occupier of those premises decided to follow them in his own car and when he got to the scene of the accident he alleged that the driver who was summoned said to him that he was " tracking the other car."

Our interest in this case is a statement reported to have been made by the advocate prosecuting, " these two men had obviously been drinking at various public houses and while there is no charge under that particular section of the Road Traffic Act, the prosecution submits that this clearly affected the manner in which the cars were driven." We wonder how it can be right for a statement like this to be made. It is highly prejudicial, and how can it be supported by evidence if that evidence does not go to show that the driver in question was under the influence of drink so as not to have proper control of his car. Short of that, what is relevant is how the car was in fact driven, having regard to what was or might have been on the road, and the evidence on that point is not strengthened in any way by the suggestion that the fact that the driver had had some alcohol clearly affected the way in which his car was driven. So far as the report we have referred to is concerned, there is no mention of any evidence to support this suggestion.

We know that opinions differ on this question, but we have said before that in our view when the prosecution are not prepared to prefer a charge under s. 15 of the Act of 1930 it is not right for them to seek to add to the evidence of the manner in which the car was in fact driven by references to the drink alleged to have been taken by the driver.

Disqualification Suspended Pending Appeal

We are not clear what was meant by a statement reported to have been made, according to *The Western Morning News* of October 15, in a case in which a motorist who had been disqualified for six months applied for the suspension of the disqualification pending the hearing of an appeal. According to the report the defending advocate gave notice of appeal immediately after the court had announced their decision " but the chairman said that once the bench had given a decision it could not be withdrawn. It had done so in the past but its action had been the subject of an appeal in a higher court, as a result of which this ruling was given."

The defendant had been fined £20, with £3 9*s*. 2*d*. costs, and disqualified for six months. The chairman's remarks can be read as meaning that the court had no power to suspend the disqualification, but we do not think that this can have been what he intended to say, because s. 6 (2) of the Road Traffic Act, 1930, as amended by the Act of 1956, provides clearly that a person who is disqualified by the order of a court may appeal against the order as against a conviction and that a court by which a person is convicted of an offence whereby he is disqualified may, if it thinks fit, pending an appeal against the conviction or order, suspend the disqualification.

The chairman went on to say that in the other case a man was able to continue driving all the summer and when, eventually, he was disqualified it was winter and this he did not mind because he normally laid up his car in the winter. It appears, therefore, that the court was saying that they were not prepared to suspend the disqualification and this is a matter which was clearly within their discretion. It is not an easy discretion to exercise because to refuse to suspend the disqualification may mean that a defendant will " pay the penalty " (for disqualification is a real penalty) in advance of the final decision on the point and if the final decision is in his favour he will have no redress. But this does not mean that a court should automatically suspend a disqualification because notice of appeal is given. Had that been Parliament's intention the Act would have said that, pending the appeal, the disqualification *shall* be suspended. The courts have been given a discretion, and they must exercise it as wisely and fairly as they can.

A Distinguished County Court Judge

We announce with regret the death at the age of 79 of His Honour Sir Gerald Hurst, Q.C., who was a county court Judge between 1937 and 1952 and a member of the House of Commons between 1918 and 1935 without break except for 1923.

Gerald Berkeley Hurst came of German-Jewish stock which had under the influence of liberal ideas in Victorian times renounced the Jewish faith. He was brought up in the Christian religion, although he was most proud of his ancestry which had many cultivated associations. He was educated at Bradford Grammar School and Lincoln College, Oxford, where he was a scholar and took a first in modern history as well as a B.C.L. He was called to the bar by Lincoln's Inn in 1898 and joined the Northern Circuit, practising in Manchester mainly in the Chancery Palatine Court. At the same time he became a lecturer on constitutional history at the university there.

When the Great War came he was 37 years of age but nevertheless he volunteered with most distinguished service in the Sudan, Gallipoli, Egypt, Sinai and Flanders, ending as Lieutenant-Colonel commanding the 7th Btn. of the Manchester Regiment. Soon after the war Sir Gerald entered Parliament as Conservative Member for the Moss Side of Manchester and represented the division continuously until 1935 except for a short break in 1923.

He had in the meantime taken silk in 1920 and continued his substantial practice in the Chancery Division both in London and Lancashire and also before the Judicial Committee of the Privy Council. He also put in a great deal of quiet but valuable work as a legislator in the House of Commons. His private member's bills were exceptionally

numerous and included the Cotton Industry Acts, 1923, 1928 and 1933, and the Nursing Homes Registration and Adoption of Children Acts. As his career advanced so honours were acquired by Sir Gerald. He became a Bencher of Lincoln's Inn in 1924, was knighted in 1929 and appointed a county court Judge in 1935 by the first Viscount Hailsham. He made an exceptionally good county court Judge, first on Circuit No. 54 (parts of Gloucester and Somerset) and then on Circuit No. 56 (Croydon and West Kent) and it was a surprise to many that he did not go to the High Court bench.

During the Second World War he served as chairman of conscientious objectors tribunals.

Sir Gerald married in 1905 Margaret Alice, daughter of the late Sir Alfred Hopkinson, K.C., a former Vice-Chancellor of the University of Manchester. His only son, Quentin, also of the Chancery Bar, was killed in the last war and he leaves five surviving daughters.

The Volume of Litigation

The Civil Judicial Statistics for 1956, which relate to the Judicial Committee of the Privy Council, the House of Lords, the Supreme Court of Judicature, the county courts and other civil courts, generally speaking shows that the volume of litigation is declining.

So far as appellate courts are concerned the total numbers of appeals in 1938, 1952 and 1956 were as follows:

	1938	1952 (peak year)	1956
Total in all Appellate Courts	987	1,420	1,103
Judicial Committee of the Privy Council	107	40	28
House of Lords from courts in England	32	23	25
Court of Appeal	574	848	662
High Court of Justice ...	263	503	378

The diminution in Privy Council work is quite intelligible having regard to the constitutional changes to the British Empire, but although the number of appeals to the House of Lords has remained fairly constant it appears clear from the trend of the figures that work in the Court of Appeal and High Court after the post-war boom period which reached its peak in 1952, is now reverting by gradual stages to its pre-war level. Original work in two out of three divisions of the High Court is also showing similar trends.

In the Chancery Division the total proceedings have dropped from 155,268 (1955) to 124,319 in 1956. The 1938 total was 103,821. In the Queen's Bench Division 1938 saw 83,351 proceedings. The peak post-war figure was 124,574 (1954) but by 1955 this figure had declined to 117,256 and the 1956 figure was 86,467.

Only in the Probate, Divorce and Admiralty Division was there an increase from 28,991 (1955) to 29,066 (1956). These statistics compare with a pre-war figure of 10,796 (1938) and a peak post-war figure of 49,376 (1947). The great increase is, of course, due to the divorce rate and Probate and Admiralty proceedings have remained relatively constant.

In the county court, however, the position is very different. In 1938 county court proceedings totalled 1,292,774. By 1946 they had shrunk to 285,683 and then by gradual stages advanced to 904,475 in 1956. The introduction of legal aid and advice to county court proceedings would certainly result in a great expansion of these figures.

Imprisonment for Maintenance Arrears

When a man is committed to prison by justices for non-payment of a sum of money recoverable as a civil debt the imprisonment does not extinguish the debt, and if it becomes possible to recover it by some other means such as execution against his property it may be so recovered notwithstanding the imprisonment. He cannot, however, be committed to prison more than once in respect of the same sum, *Evans* v. *Wills* (1876) 40 J.P. 229. This is not the position when the question is one of enforcing bastardy or maintenance arrears, which are not declared to be recoverable as a civil debt, and the law is that imprisonment extinguishes the debt. The result is that a man who obdurately refuses to pay and is sent to prison cannot be made to pay even if he has resources which the court cannot touch. Thus the woman is deprived of her allowance and may have to resort to national assistance.

At the annual conference of the Magistrates' Association a resolution was passed calling for a change in the law so that imprisonment would not automatically extinguish such arrears. On the assumption that today a man is not sent to prison unless the court thinks he could have paid, the suggestion seems reasonable, especially when the power of the court to remit arrears in its discretion is borne in mind. Whether the change would in fact make much difference depends in part on another possible change which has been often proposed, and which we favour, namely, power being given to the court to attach earnings.

Attachment of Earnings

Addressing the conference, Mr. J. E. S. Simon, Parliamentary Under-Secretary of State at the Home Office, said that the possibility of legislation about enforcement of maintenance arrears was under consideration. He went on to draw a contrast between the position in England, where some five thousand men were among the prison population each year in respect of maintenance arrears, with that in Scotland, where there are virtually no such civil prisoners. The threat of arrestment, or as we should say attachment, usually proves sufficient.

We hope this is an indication that a Government Bill may be introduced providing for the attachment of salaries, wages and other income to satisfy payments due under court orders. Those men who pay regularly would not need to be affected by it at all, and we do not believe that many employers would find it irksome to make deductions from salaries and wages where this was required. The system is said to work smoothly and effectively in Scotland, and ought to work equally well in England. In our opinion the opposition of the trades unions and of employers is based on needless apprehension of the result of touching a man's earnings at the source as if it were a dangerous invasion of rights. Few men would be affected, compared with the vast number of men in employment and there is no fear that this would prove to be the thin end of a wedge. A number of women would receive what is due to them, instead of having the doubtful satisfaction of seeing their husbands sent to prison, and the public would benefit.

Incidentally there would be some slight relief to our overcrowded prisons.

Passive Resistance

The refusal of a defendant to pay income tax, and her determination to go to prison instead, because, as she said, half of it was spent on atom bombs, recalls events of some 50 years ago, when a number of ratepayers refused to pay that portion of their rates which was devoted to purposes of education. These, mostly Nonconformists, became known as passive resisters. Many of them had their goods sold, but often friends bought them and returned them. The conscientious motives of the resisters were beyond dispute, but whether the movement had much effect it is difficult at this day to say.

The ground of the complaint was that, so it was said, under the Education Act, 1902, public money was really being used to subsidize the teaching in schools of the dogmas of particular religious denominations, in violation of what was referred to as the Cowper-Temple Clause in an earlier Act.

In the recent case reported in the *Daily Express* a Nonconformist minister is stated to have said he intended to pay the unpaid tax, the lady being a member of his congregation. Whether she will raise objection to this remains to be seen.

The Insurance of Invalid Carriages

By s. 35 (7) of the Road Traffic Act, 1930, the provisions of part II of that Act (provisions against third-party risks arising out of the use of motor vehicles) do not extend to invalid carriages within the meaning of part I of the Act. These are defined in s. 2 as mechanically propelled vehicles, not exceeding 5 *cwt.*, unladen weight, specially designed and constructed, and not merely adapted, for the use of persons suffering from some physical defect or disability *and used solely by such persons* (the italics are ours).

In the *Manchester Guardian* of October 17 is a report of a case in which an invalid gave his wife a lift in his invalid carriage. Husband and wife were both summoned for using the vehicle when it was not properly insured, the argument being that it was not being used solely by the invalid and the exemption from the requirements of part II of the Act no longer applied. The learned stipendiary magistrate before whom the case came dismissed the case against the wife but was minded to convict the husband until he had evidence from a senior official of the Ministry of Health that the Ministry automatically insures all invalid carriages which it issues, the official adding that the insurance was valid even though a passenger is carried, but "the carrying of passengers is strictly prohibited and the Ministry will not allow it at all."

At first sight this seems a strange state of affairs. The Ministry prohibits the carriage of passengers, but it provides insurance cover if they are carried. Our guess is that the reason for this apparent "contradiction" is that the Ministry wish to avoid any possibility of third party claims not being met if an invalid, in using his carriage, disobeys instructions and carries a passenger and is, while so doing, involved in an accident. It would seem that the Ministry's only remedy against an invalid who disobeys instructions is to take away the carriage from him, and that is probably a course of action which they would be most reluctant to take.

Prisoner to the Rescue

It is all too common to read of assaults on the police, and so it is a pleasant change to come across an instance of a prisoner giving much-needed help to them. Such an instance is reported in *The Birmingham Post*. A man had been arrested on a charge of stealing a lorry, and was being conveyed in custody in a police car when it was involved in a crash. The police officers were trapped in the car, but their prisoner managed to free himself. Instead of taking the opportunity to escape he helped the officers, stopped a passing car and waited with the officers until other police and an ambulance arrived and took them over from his care.

At Dudley magistrates' court he pleaded guilty and, because of what the chairman described as his desperately bad record, was committed to quarter sessions for sentence, the chairman saying he hoped the prisoner's action in helping the police would be taken into consideration. The man said that he has never been given a chance on probation. His sentences were stated to include several terms of imprisonment, two of borstal training, and fines.

This man must in his time have had many contacts with the police, and had no doubt found them fair in their dealings, so that he entertained no feelings of animosity towards them. It is often found that what the police sometimes describe paradoxically as a "good man" (at crime), his attitude is that it is his business to commit crimes and theirs to catch him if they can, but it must be a "fair cop." In such cases there is no personal ill will on either side.

Common Sense Prevailed

Although we think school authorities, like courts, need not be over particular about the clothes worn by those who have to attend them, we are in agreement with those who set some limits in this matter. In the case of children attending school, for example, it is quite reasonable to insist that they should not wear costume that renders them conspicuous in a way that may excite ridicule or may impair the discipline of a class.

In the *Manchester Guardian* there has appeared a report of a case in which a father was prosecuted for not sending his 12 year old son regularly to school. The history of it was that earlier in the year the boy had been excluded because he attended school in a black jerkin with writing and musical notes on it, and the father had been summoned and fined. Later the boy came to school in a canary-coloured jersey with prominent black lines and notes of music. The headmaster and the local education authority considered this kind of thing a possible threat to discipline and after the father had been warned proceedings were taken against him for not sending the boy to school. This time, however, the prosecuting solicitor was able to tell the magistrates that the boy was now attending school suitably dressed. The summons was therefore withdrawn, by permission of the court, and the chairman observed that common sense had prevailed. We cannot improve on his comment.

Costly "Contempt"

The *Newcastle Journal* of October 17 reports the prosecution at Chester-le-Street, of a lorry driver who, having apparently ignored a summons three times, was fined £5 and ordered to pay £55 17*s.* 6*d.* costs for driving without due care and attention. On this occasion he appeared and expressed his regret for his previous absence. His address was in London.

This is a heavy award of costs, but the costs were actually incurred, since witnesses had been brought a considerable distance on three occasions and a sum of ten guineas was included for the fees of the solicitor, who also, we presume, attended three times. The chairman of the bench said the defendant had treated the court with contempt. If this was intentional we are not surprised that the defendant was ordered to pay considerable costs. No doubt, as they were so large, the court gave ample time for payment. From the newspaper account we should suppose the defendant ignored the summons, as if he had written to the court and asked for an adjournment this request would have received due consideration. What is plain is that nobody should simply ignore a summons, and that to do so is dangerous.

PROFESSIONAL PRIVILEGE

By C. B. ORR, *Barrister-at-Law*

The case of *R.* v. *Montgomery and Others*, which occupied so much of the time of His Honour Judge Aarvold at the Old Bailey during September, October and November, 1956, and in which applications for leave to appeal were dismissed by the Court of Criminal Appeal only on June 24, 1957, never lacked in interest and raised several important questions of law, the most important of which was professional privilege.

The indictment, containing 20 counts, one of conspiracy to defraud, 11 of false pretences, five of fraudulent conversion, one of fraudulent trading and two of taking part in the management of a limited company whilst an undischarged bankrupt, was the result of an organization, first a firm and subsequently a limited company, which with an original capital of £350, set out to buy land on which to build houses for sale. The original £350 was laid out on the deposit on the purchase price of the first piece of land, leaving nothing to pay even the first week's wages, and the concern was thenceforth financed by the deposits paid by would-be house purchasers.

On a motion to quash the indictment it was held:—(1), the words "By false pretences and divers other false misleading or deceptive statements and other fraudulent devices" in the particulars of offence of the conspiracy to defraud did not vitiate the count for uncertainty and duplicity; (2), similarly the words "honest and genuine" in the particulars of offence of obtaining a valuable security by the false pretence that the H. B. & C. Co., Ltd. were carrying on an honest and genuine business did not vitiate that count; (3), an application and declaration under subs. 1 of s. 332, Companies Act, 1948, was not a prerequisite to a prosecution under subs. 3 of the section or to the jurisdiction of the court to try a count charging an offence under the said subsection, (4), the defence having been in possession of copies of the indictment for some three months and having failed to apply to the prosecution for particulars, the prosecution should not now be ordered to supply particulars.

Decision (3) above, in the event, did not affect the result as His Lordship in summing up excused the jury from giving a verdict on the relevant count as if the defendants were not guilty on the count of conspiracy to defraud, they were not guilty also on this count and, if they were guilty on the conspiracy count, the count of fraudulent trading was of little importance.

In the course of the first trial, by an unfortunate accident the first jury had to be discharged after having heard the whole of the prosecution and part of the defence evidence for 23 days; the prosecution proposed to call the limited company's solicitor to prove certain letters addressed by him to the company. On a preliminary objection by the defence, His Lordship held that in the case of a limited company in liquidation (compulsory) s. 245 (2) (*b*), Companies Act, 1948, did not empower the Official Receiver to waive privilege claimed by the company's solicitor against disclosing confidential communications between himself and the company.

The solicitor concerned, on being called into the box, stated that he was no longer instructed by the company and that he had no specific instructions from his former client as to whether he should claim privilege. His Lordship then advised the witness that he was under a duty to claim privilege.

The prosecution, arguing that there was ample authority for the production *aliunde* of copies of privileged documents and *a fortiori* the originals could be produced if no longer in the hands of the privileged party, then proposed to call a police officer to produce the letters as being papers seized by him when he searched the company's office. His Lordship directed that the letters be admitted but that at the moment they should be kept separate and neither read nor shown to the jury, saying that a study of the precedents quoted in argument by the prosecution and defence did not clearly show on what principle the courts had acted when allowing or disallowing production of copies.

The point did not arise at the hearing before the second jury as the prosecution did not tender the letters concerned. On the other hand, Montgomery, who was defending himself at the time, must have clearly indicated to the jury that there was something in the letters which he was unwilling that they should see, even though he was strongly tempted to refer to them for some purpose.

His Lordship indicated that, in the special circumstances of the case, the prosecution case being that the defendants were the officers who managed the company, he would direct the solicitor to answer questions as to advice given if asked by any of the defendants, but that if such questions were asked the prosecution would be entitled to bring out the whole of the advice given.

Why a party and his solicitor should be privileged from disclosing communications between them and at the same time the other party should be allowed to get round the privilege and put in evidence the privileged communication, if he can do so by some other witness, seems to call for some inquiry.

The reason for the privilege was explained by Jessel, M.R., in *Anderson* v. *Bank of British Columbia* (1876) 2 Ch.D. 644 at p. 649:—"The object and meaning of the rule is this: that as, by reason of the complexity and difficulty of our law, litigation can only be properly conducted by professional men, it is absolutely necessary that a man, in order to prosecute his rights or to defend himself from an improper claim, should have recourse to the assistance of professional lawyers, and it being so absolutely necessary, it is equally necessary, to use a vulgar phrase, that he should be able to make a clean breast of it to the gentlemen whom he consults with a view to the prosecution of his claim, or the substantiating his defence against the claim of others, that he should be able to place unrestricted and unbounded confidence in the professional agent, and that communications he so makes to him should be kept secret, unless he consent (for it is his privilege, and not the privilege of the confidential agent), that he should be enabled properly to conduct his litigation. That is the meaning of the rule."

Again in *Wheeler* v. *Le Marchant* (1881) 17 Ch. D. 675, at p. 680, he said: "The protection is of a very limited character and in this country is restricted to the obtaining the assistance of lawyers, as regards the conduct of litigation or the rights of property. It has never gone beyond the obtaining of legal advice and assistance, and all things reasonably necessary in the shape of communication to the legal advisers are protected from production or discovery in order that legal advice may be obtained safely and sufficiently."

In *Lyell* v. *Kennedy* (1884) 27 Ch. D. 1, Cotton, L.J., put it: "Now the only privilege which can be claimed, and such as here the defendant desires to claim, is what is called 'professional privilege' that is to say, that if a man does not employ a solicitor, he cannot protect that which, if he had employed a solicitor, would be protected; the reason for this privilege being, as has frequently been stated, that the English law being technical, the greatest facilities ought to be afforded to everyone who is involved in litigation to consult a solicitor and to receive from his solicitor communications which shall be privileged, and to enable the legal adviser of the party employing him to make a sufficient investigation, and so obtain the fullest means of ascertaining what advice he shall give as to the course to be adopted, without affording the opportunity to an opponent of prying into those communications, those searches, those responses, which are according to English law all of a confidential character. But then this privilege is confined to that which is communicated to or by that man or to the solicitors or their agents, or any persons who can be treated properly as agents of the solicitors." In the same case, before the House of Lords (1884) 9 A.C. 81, according to Lord Blackburn: "The law of England, for the purpose of public policy and protection, has from very early times said that a client may consult a solicitor (I mean a legal agent) for the purpose of his cause, and of litigation which is pending, and that the policy of the law says that in order to encourage free intercourse between him and his solicitor, the client has the privilege of preventing his solicitor from disclosing anything which he gets when so employed, and of preventing it being used against him, although it might otherwise be evidence against him."

Many other cases, for example: *Greenough* v. *Gaskell* (1833) 1 My. & K. 98; *Nias* v. *N. E. Railway Company* (1838) 3 My. & K. 355; *Reid* v. *Langois* (1849) 1 Mac. & G. 628; *Minet* v. *Morgan* (1873) L.R. 8 Ch. App. 361; *Goldstone* v. *Williams Deacon & Co.* (1899) 1 Ch. 47, show that throughout the principle of professional privilege lies in the necessity for laymen to obtain legal advice without fear of what passes between himself and his adviser being later revealed in court to his disadvantage.

Where the litigant has not consulted a solicitor the privilege of refusing to disclose documents does not exist, *Lyell* v. *Kennedy, supra, Kyshe* v. *Holts Childs & Brotherton* (1888) W.N. 128, and the solicitor must have been consulted as solicitor, *The Mayor, etc., of Swansea* v. *Quirk* (1879) 5 C.P.D. 106.

The privilege, where it exists, is that of the client not of the solicitor, *Beer* v. *Ward* (1821) Jas. 77, and only the client can waive it, *R.* v. *Leverson* (1868) 11 Cox 152. If the client be adjudged bankrupt, the power to waive does not pass to the trustee in bankruptcy, *Bowman* v. *Norton* (1831) 5 C. & P. 177.

Privilege does not exist where the client has authorized the solicitor to disclose the matter to the other side, *Conlon* v. *Conlons Ltd.* [1952] 2 All E.R. 462, nor as to facts communicated by the solicitor to the client which cannot be the subject of a confidential communication between them, *Foakes* v. *Webb* (1885) 28 Ch. D. 287, nor as to documents which have been brought into existence in the course of, or in the furtherance of, a fraud, *O'Rourke* v. *Derbyshire* [1920] A.C. 581; *Williams* v. *Quebrada Railway Land and Copper Co.* [1895] 2 Ch. 751, nor where the communication was made to the solicitor by the client for the purpose of being guided in the commission of crime, *R.* v. *Cox & Railton* (1884) 14 Q.B.D. 153, nor where a prisoner is charged with an offence, *e.g.*, forgery, in respect of the document, *R.* v. *Brown* (1862) 9 Cox 281.

In order to ensure that a client might confidently consult his solicitor, Singleton, L.J., dissenting, in *Schneider* v. *Leigh* [1955] 2 All E.R. 173 (in which case, the defendant, a doctor, made a report concerning the plaintiff to a company against whom the plaintiff was making a claim, the report was shown to the plaintiff, who thereupon instituted proceedings for defamation), was prepared to extend the right of privilege to a person making a report to the solicitor, saying: "This branch of the law of privilege is for the purpose of enabling a litigant, or a party to an impending litigation, to prepare his case. Statements must be taken, and sometimes reports must be obtained. *Prima facie* they are the subject matter of privilege. The privilege is that of the litigant, but it enures for the benefit of the one who makes the statement or report. If it did not, the difficulties of litigation would be almost impossible. Who would make a statement to a solicitor if he was faced with the risk of an action for libel by the opposite party? It is not so much the fear of the result, but the worry of proceedings, which would deter potential witnesses from giving statements." At first sight it might be thought to be reasonable that the protection of privilege should extend to the person who makes the report equally as it extends to the person to whom the report is made and indeed leave to appeal to the House of Lords was granted. In the same way it would seem reasonable that where a party or a solicitor (even of a person not a party) is privileged from giving evidence concerning or from producing communications, the privilege should extend to prevent the opposite party putting the communication in evidence by some other method and thus defeating one of the objects of privilege as stated by Lord Blackburn in *Lyell* v. *Kennedy, supra, i.e.*, "of preventing it being used against him, although it might otherwise be evidence against him."

In the case of Montgomery and others, the privilege was that of the company, not a party to the case, but it was apparently to the advantage of the defendants that disclosure should not be made. Where the privileged person is also a party to the case, there would seem to be an even stronger reason why the other side should not be allowed to side step the privilege by producing a copy. There can, however, be no doubt that a copy of a document can be proved where the original is protected, *Calcraft* v. *Guest* [1898] 1 Q.B. 759.

The privileged person can in appropriate circumstances obtain an injunction restraining production, *Lord Ashburton* v. *Pape* [1913] 2 Ch. 469, where Cozens-Hardy, M.R., said: "The rule of evidence is explained in *Calcraft* v. *Guest, supra,* merely amounts to this, that if a litigant wants to prove a particular document which by reason of privilege or some circumstance he cannot furnish by the production of the original, he may produce a copy as secondary evidence although that copy has been obtained by improper means. The Court in such an action is not really trying the circumstances under which the document was produced. That is not an issue in the case and the Court simply says 'Here is a copy of a document which cannot be produced; it may have been stolen, it may have improperly got into the possession of the person who proposes to produce it, but that is not a matter which the Court in the trial of the action can go into.' But that does not seem to me to have any bearing upon a case where the whole subject-matter of the action is the right to retain the original or copies of certain documents which are privileged."

In *Beer* v. *Ward* (1821) Jac. 77, an injunction restraining a solicitor from giving evidence of confidential matters was refused although it was stated that he might be restrained from communicating that which came to him confidentially from his former client. *See* also *Davies* v. *Clough* (1837) 8 Sim. 262.

Where a document was in existence before an inquiry under 15 & 16 Vict. *c.* 57, which gave certain protection, the document having been produced at the inquiry, and at a subsequent trial production being refused by the defence, Hill, J., said, in *R.* v. *Leatham* (1861) 8 Cox 498 at p. 505: "Assuming that the letter itself was not admissible, I should say that the secondary evidence of its contents would be, if the secondary evidence was independent of the first, because it is a well established rule of law that if a document cannot be proved in Court because of the privilege of one of the parties who holds it, or of the individual in whose custody it is, or of the public officer with whom the document lies, in any of these cases if the privilege be established against the production of the original document, independent secondary evidence of the contents of the document is admissible."

In *Lloyd* v. *Mostyn* (1842) 10 M. & W. 476, objection was taken to the production of a copy, the original being privileged, on two grounds: (1) That the copy had been taken when the document was produced for inspection under a Judge's order: as to this Parke, B., said at page 481–2: "Where an attorney entrusted confidentially with a document communicates the contents of it, or suffers another to take a copy, surely the secondary evidence so obtained may be produced. Suppose the instrument were stolen, and a correct copy taken, would it not be reasonable to admit it?" Lord Ashburner, C.B., ruled: "It is impossible to say this copy was not evidence." (2) That notice to produce was insufficient.

By 1849 it was so clearly settled that copies could be produced that in *R.* v. *Hankins* (1849) 2 C. & K. 823, the point taken by the defence was merely as to the adequacy of the notice to produce the original. *See* also *Coates* v. *Birch* (1841) Adol. & Ellis N.S. 2 Q.B. 252.

The explanation apparently is that the rule allowing privilege is itself an exception to the general rule that evidence which is relevant is admissible, however it may have been obtained, unless excluded by some particular exception to the general rule, *Karuma* v. *The Queen* [1955] 1 All E.R. 236; A.C. 197; *R.* v. *Sims* [1946] 1 All E.R. 697. On the other hand the admission of secondary evidence is itself an exception to the best evidence rule and in *R.* v. *Elworthy* (1867) 1 C.C.R. 103, Kelly, C.B., was unwilling to extend the principle of admitting evidence which was not the best evidence so as to allow secondary evidence of a document to be given when no notice to produce had been served on the defendant.

In civil cases the outcome of the conflict between the exceptions to the two rules may be due to the application of equity as illustrated by Cave, J., in *Kyshe* v. *Holts, Childs and Brotherton* (1888) W.N. 128. In criminal cases the conflict was perhaps solved by the absurdity of allowing a manifestly guilty person to escape his deserts, *vide* Crompton and Blackburn, JJ., in *R.* v. *Leatham* (1861) 8 Cox 498, at pp. 503 and 501 respectively. The severity of the solution is mitigated by the application of judicial discretion in excluding evidence technically admissable and this exercise of judicial discretion probable explains why so few of the cases reported on the subject are criminal.

In *R.* v. *Peterson and Others,* tried by Judge Aarvold at the Central Criminal Court during the 8th January Session, 1957, prisoner A had made a self-incriminating statement to the solicitor for prisoner B which tended to exonerate B. Evidence of this statement was tendered by counsel for the defence of B and admitted.

THE PUBLIC ANALYSTS REGULATIONS, 1957: A CRITICAL NOTE

[CONTRIBUTED]

These regulations (S.I. 1957 No. 273), which came into operation on May 27, 1957, were made by the Minister of Agriculture, Fisheries and Food and the Minister of Health under the powers conferred on them by ss. 89 (2) and 92 (5) of the Food and Drugs Act, 1955. They replace similar regulations made in 1939 under the Food and Drugs Act, 1938. The purpose of this article is to consider, in particular, the new form of certificate to be given by public analysts in pursuance of s. 92 of the Food and Drugs Act, 1955; the qualifications required by the regulations of a person appointed as a public analyst (in accordance with the provisions of s. 89 (2) of the Act) remaining unchanged.

As to the form of the certificate and the notes appended to but not being part of it, there are changes from those previously approved.

The first portion of the certificate which identifies the sample and acknowledges its receipt, is re-drafted and provides for the certificate being given by a public analyst to whom the sample was sent by the public analyst to whom it was originally submitted, in conformity with s. 92 (4) of the Act which provides that such a procedure may be adopted when the latter public analyst determines that he is for any reason unable to perform an effective analysis. In cases where this procedure has been followed the public analyst who performs the analysis must on the certificate state who sent him the sample. Note (5) relating to this portion directs him to "Insert, if appropriate, the name and designation of the analyst to whom the sample was originally submitted." It is not clear in what circumstances it would be inappropriate to do this, for it seems obvious that, for the sake of clarity and completeness, it should be done. Also, formerly, a public analyst had to certify that the sample "was submitted as a sample of . . ."; this has now been deleted. This information may or may not appear, now, in the space provided for recording the "marking" of the sample as received by the public analyst; the note to this portion directs the insertion of particulars of marking, *e.g.*, date, number, etc., but it is common practice for sampling officers to mark their samples with the designation of the article sampled, and this presumably will usually be inserted therefore in the "marked" space by the analyst completing his certificate.

The second part of the certificate begins, "I further certify that the sample has been analysed by me, *or under my direction,* and as a result of *the* analysis I am of the opinion

that :—" The phrase in italics is an addition, formerly, also, " my " stood for the " the " italicized. The result is to make literal acknowledgement of subs. (6) of s. 92 of the Food and Drugs Act, 1955, which states that " any certificate of the results of an analysis given by a public analyst in pursuance of this section shall be signed by the public analyst, *but the analysis may be made by any person acting under the direction of the analyst.*" The words in italics in this subsection are new, with effect from January 1, 1956, but were declaratory of the prior law : *cf. Bakewell* v. *Davis* (1894) 1 Q.B. 296; 58 J.P. 228. In this part of the certificate is made, as formerly, provision for the observations of the public analyst. The note to this section reads as follows :—

" Here the analyst may insert at his discretion his opinion whether the analysis indicates any addition, abstraction, or deficiency or the presence of foreign matter or other defect and whether the nature, substance or quality is thereby affected; any physical, chemical or other properties bearing on the nature, substance or quality of the article; whether the article is injurious to health or unfit for human consumption; whether and in what respect a label or description or any advertisement relating to the sample is incorrect or misleading; and he may add any other observations he may consider relevant." There are material differences in this note from that in the former certificate.

The note has been re-drafted and the specifications are not so elaborately set out as heretofore. There would seem to be no loss in the new form, however, which doubtless will cover all that a public analyst should properly need to observe. There remain two points to be made.

First, the note states that the public analyst may " add any other observations he may consider relevant." This phrase repeats the like in the 1939 Regulations where it was first introduced. It may be noted that it had already been held that " surplusage " does not render a certificate invalid (*cf. Gordon* v. *Love* (1911) S.C. (J.) 75; 25 Digest 127, O.). Secondly, it must, nonetheless, be borne in mind that the evidence of a public analyst, as such, must be confined to what it is proper for him as an expert to give. In view of this we think it a mistake that the note elsewhere purports to permit him to insert, at his discretion, his opinion as to " whether and in what respect a label or description or any advertisement relating to the sample is incorrect or misleading." The latter invitation is new, and we think susceptible of sharp criticism. The public analyst is an expert by prescribed qualification (s. 89 (2) of the Food and Drugs Act, 1955 and reg. 2 of the Public Analysts Regulations, 1957) in the analysis of food and drugs; he is required to give, on the prescribed form of certificate (s. 92 (5) of the Food and Drugs Act and reg. 3 and the schedule to the Public Analysts Regulations) the result of his analysis of samples of food and drugs submitted to him (s. 92 (5) of the Act). So far as the evidential admissibility of his opinion is concerned it is submitted that he must conform to the general rules regarding admissibility of such evidence. It is submitted that where the issue involves other elements beside the purely scientific, the expert must confine himself to the latter and not give his opinion upon the legal or general merits of the case (*Seed* v. *Higgins* (1860) 8 H.L. Cas. 550; 36 Digest (Repl.) 774, *1215*; *Joseph Crosfield & Sons, Ltd.* v. *Techno-Chemical Laboratories, Ltd.* (1913) 30 R.P.C. 297; 36 Digest (Repl.) 753, *974*; *Jameson* v. *Drinkald* (1826) 12 Moore C.P. 148; *Campbell* v. *Rickards* (1833) 5 B & Ad. 840). In *Taylor on Evidence* (12th edn. p. 902) appears the following passage, ". . . the opinion of skilled witnesses cannot be received when the inquiry relates to a subject which does not require any particular habits or course of study to qualify a man to understand it. Thus evidence is inadmissible to prove that one name, or one trade mark, so nearly resembles another as to be calculated to deceive, or that a tin of coffee is so like another as to be calculated to deceive purchasers." One of the three cases (*North Cheshire & Manchester Brewery Co.* v. *Manchester Brewery Co.* (1889) A.C. 83; 68 L.J. Ch. 74; *Bourne v. Swan and Edgar* [1903] 1 Ch. 211; 72 L.J. Ch. 168; *Payton & Co. v. Snelling, Lampard & Co.* [1901] A.C. 308; 70 L.J. Ch. 644) referred to in this passage, we draw attention, in particular to the *Bourne* case. This concerned a pictorial trade mark, and the question before the court was, " Is the picture calculated to deceive, so as to lead people to believe that the goods of the defendant are the goods of the plaintiff ? " In the course of his judgment in this case Farwell, J., posed the question " What evidence is admissible ? " and continued, " You have neither actual fraud, nor any case of actual deception proved; it is not a proper question to put to the witness " Is the picture or mark complained of calculated to deceive the public ? " The House of Lords has put it on the ground, and the Lord Chancellor especially has put it on the ground, that the question is the very issue which the Court has to determine, and that therefore it is not a proper question to put to a witness . . . It appears to me that there is another reason against the admissibility and that is, that I do not see how you can call any individual to give what is in truth expert evidence as to human nature, because what they are asked in this form of question is, not what would happen to them individually, but what they think the rest of the world would be likely to suppose or believe. They are not experts in human behaviour, nor can they be called to give such evidence . . . the eyesight of the Judge is the ultimate test."

It is true that where the issue is substantially one of science, the expert may, if he has himself observed the facts, be asked the very question which the Court has to decide (*see Phipson on Evidence*, 9th edn., p. 408) but, it is submitted, it is patently clear that cases under s. 6 of the Food and Drugs Act, 1955, in respect of labels or advertisements which are calculated to mislead do not fall within this exception. The test must be what would the ordinary person understand by the label or advertisement, and that would depend upon many factors including the lay out and design of the printing, in type and/or in picture, and what such a person would understand or be deemed to understand the whole under consideration to mean (*cf. Collins Arden Products* v. *Barking Corporation* (1943) 107 J.P. 117; *Webb* v. *Jackson Wyness, Ltd.* (1948) 113 J.P. 38). Certainly on the first consideration the public analyst is no expert.

On this particular point, the case of *Concentrated Foods, Ltd.* v. *Champ* (1944) 108 J.P. 119 is of great interest. This was a food and drugs prosecution for giving with a soft drink a label calculated to mislead. The words complained of on the label were " Concentrated Cordial Essence. Orangette . . . " Before the justices, one public analyst, who had given prior opinion to the original defendant company that the label was innocuous, was called to give similar evidence, and another public analyst was called by the prosecution and gave evidence that the label was objectionable. In the course of his judgment in the Divisional Court, Wrottesley, J., said, " The question whether the label was objectionable meant, of course, whether it offended against the Act. That was a matter not for any expert witness, but for the Court. This kind of argument is, in my judgment, founded on a misconception of the true scope and function of expert witnesses.

Experts in these cases are, of course, chemists. They are there to inform the court of the subject matter of the charge. In addition they are, like all expert witnesses, entitled, if asked, to give their opinion based on their examination of the subject matter, provided it is within the scope of their special knowledge. The question whether a label is calculated to mislead means calculated to mislead the public, not the qualified chemist, and it is a question not for qualified chemists, but for the justices. Unfortunately, in these cases we find that manufacturers are very prone to use phrases such as "concentrate," "extract," "essence," "cordial"—phrases which may very well have a special meaning to a chemist. It is not surprising, therefore, that a chemist should tell the court that an article is not his idea of an essence or an extract. But that is not the test. The test is—what does the ordinary man understand by the language? Was he misled? The question is not whether the chemist was misled, but whether the ordinary man was misled."

So far, the argument against the invitation in note (7) to which attention has been drawn has particularly sought to discount the validity of a public analyst expressing any opinion as to whether and in what respect a label or description or advertisement relating to the sample is *misleading*. It is submitted that the rest of the invitation, namely, that he may do the same in respect of the *correctness* of the label, description or advertisement, is generally open to the same objection. The latter is, in the general terms in which it is put, inviting observations which must in many cases be outside the proper bounds of the public analyst as an expert. Further, bearing in mind that what is formally submitted under statutory powers to an analyst is merely a sample in a sampling jar, marked with a designation written on by a sampling officer, it seems extraordinary that his opinion on a certificate should be invited in respect of matters on a trade label or advertisement, not required to be (and not in practice) sent to the analyst. This is not to say that where a sample is submitted which is not, for example, of the substance of that which it is designated, as when non-brewed condiment is sold as vinegar, the public analyst should not state on his certificate what the substance is, and also what the composition of the article it was designated is (*i.e.*, what it should be). It has frequently been held to be his duty to provide the magistrates with evidence upon which they can decide whether or not an offence has been committed. But, it is unnecessary and undesirable, in our view for an analyst to go further. We suggest, therefore, that the invitation should be ignored, in practice, except to the circumscribed extent permitted an expert; and in due course deleted from the note.

Lastly, the certificate, below the space for *Observations*, states, "I certify that the sample had undergone no change which would affect the opinion expressed above." There is no provision for alteration of this statement if the sample has changed between the time of sampling and the time of analysis. Formerly, this statement was not printed on the form, but in a note there was this remark, "In the case of a certificate regarding milk, or any other article liable to decomposition, the analyst should specially report whether in his opinion any change had taken place in the constitution of the sample that would interfere with the analysis." It is wrong, in our view, that this matter has been altered in this way. The decomposition or alteration of the sample in such a way as to affect analysis before the analysis is made is clearly a vital matter, it is further one which is solely within the knowledge of the analyst. So material a matter should be impartially expressed on the certificate form which should contain a clear direction to the analyst expressly to signify whether the sample has so changed or whether it has not. The correct way to draft the statement is to put on the form "The sample has/has not (8) undergone change which would affect the result of the analysis" and to the guidance notes to add "(8) Delete whichever is inapplicable."

POLICE RENT ALLOWANCES

For a long time many of the police have been dissatisfied with the rent allowances which they receive.

It will be remembered that reg. 28 of the Police Regulations, 1952, requires a police authority in England and Wales to provide each member of a police force with a house or quarters free of rent and rates or to pay him a rent allowance. Such rent allowance is to be either a "maximum limit" allowance or a "flat-rate" allowance.

The maximum limit must be fixed for each rank by the police authority with the approval of the Secretary of State: subject to this the amount to be paid is, in the case of an owner-occupier, the aggregate of the rates he pays plus 125 *per cent.* of the gross Schedule A value of his house, and in the case of an officer who is a tenant of unfurnished accommodation sufficient within the prescribed limit to reimburse rent paid plus rates. The maximum limit allowance is paid to a married man not separated from his wife and to certain other officers if the police authority think fit.

The flat rate allowance is equal to half the amount fixed as the maximum limit for members of the same rank and is generally applicable to single men or women, although the police authority may in certain circumstances grant single women maximum limit allowances.

In addition to the actual allowance he receives a police officer is entitled to receive a compensatory grant equal to the income tax which he has paid in the previous year on his rent allowance or on a compensatory grant.

This is the situation in which negotiations and representations have placed the police since the Desborough Committee reported in 1920 that "As regards housing and rent aid there is at present a great diversity of practice between one force and another." At that time in many city and borough forces no rent aid at all was given, in the metropolitan police married men received aid at rates varying between 1*s.* 6*d.* and 2*s.* 6*d.* weekly, and although most county forces paid rent allowances there were considerable diversities in the amounts allowed. The Desborough Committee wanted standardized police pay but realized that this could not be achieved unless housing conditions were assimilated. The Committee therefore recommended that an allowance should be given in all cases to cover the rent paid by the individual constable not exceeding a maximum limit to be fixed for each rank determined on the basis of an average reasonable rent for a policeman to pay according to his rank and the locality where he lived: houses should in all cases be subject to the approval of the police authority.

The present maximum limit weekly rates for provincial forces in England and Wales are 30*s*. for constables, 32*s*. for sergeants and 35*s*. for inspectors: 5*s*. weekly is added to each of these figures in the metropolitan and city of London forces. These figures are the result of the work of a committee on police rent and supplementary allowances which reported in 1947. The Committee recommended the figures quoted as sufficient to reimburse the rent and rates of all married men in unfurnished accommodation with the exception of those who had rented unnecessarily expensive properties. In recommending action to the police authorities on the proposals the Home Office representative wrote: "In some forces the circumstances may justify somewhat lower maxima, but in any event the Secretary of State would regard as inappropriate any maximum lower than the amount of the rent and rates of a house forming part of a local authority's housing scheme . . ."

Several grounds impelled the police to seek improvement of the existing allowances.

First there was the increasing number of officers whose outgoings exceed the present maximum limits. In 1947 the maxima fixed were sufficient to secure total reimbursement to all but three *per cent*. of the officers concerned: at present those having to dip into their own pockets are not far short of 30 *per cent*. Such a great increase effectively demonstrates how far present conditions have moved away from the principles laid down by the Desborough Committee and implemented by the figures of 1947: further deterioration is likely as the Rent Act, 1957, becomes effective. It is well known that present council house inclusive rents in numerous cases exceed 30*s*. weekly.

Secondly, the forces have been dissatisfied about the position of owner-occupiers. Their case was reviewed with care and thoroughness in 1947 when it was found that they comprized some 25 *per cent*. of the total receiving rent allowances. Varying systems of assessing the equivalent rental value of their houses were in force, including comparison of rents of similar houses in the same street or district and, in the Metropolitan District, the use of the gross Schedule A income tax assessment. Because of difficulties of comparison caused by the Rent Restrictions Acts the Committee recommended the adoption of the metropolitan basis, increased to 125 *per cent*. to allow for the difference between rents and Schedule A values: this suggestion was accepted. It has never been popular with the police who strongly hold the opinion that the application of this yard-stick has resulted in injustice to the owner-occupier, even by comparison with the officer who rents a house. Failure to revalue Schedule A assessments has meant no increase for the owner and there are now large differences and discrepancies between income tax and rating valuations.

Thirdly, and this is a sore point indeed, there are the police authorities who operate maximum limits below the figures which the Secretary of State is prepared to approve. These are mostly county boroughs plus three or four county standing joint committees. These authorities no doubt justify their actions by reference to the level of rents, including council house rents, in their respective areas, but the policeman in these areas does not see the justice of the extra charge which he is called upon to pay when his outgoings exceed the local limit, by comparison with his more fortunately placed colleagues elsewhere. In England and Wales he has no remedy at present because the Secretary of State has no power to compel a police authority to increase a locally decided maximum: in Scotland, however, the Secretary of State has wider powers and can fix the allowances, after consultation with the police authority.

The negotiations lately concluded have resulted in considerably enhanced benefits. Maximum limit allowances have been increased by 12*s*. 6*d*. a week in the provinces to 42*s*. 6*d*. for constables, 45*s*. for sergeants and 47*s*. 6*d*. for inspectors. In the metropolitan police district the constable's maximum is 52*s*. 6*d*., with corresponding increases for the higher ranks. The settlement has ensured a return to the principles of Desborough and the Committee of 1947, that is to say the mass of those police officers living in accommodation suitable to their ranks (and we cannot believe there are many who are living more luxuriously) will now secure full reimbursement of their outgoings.

Coupled with the new figures is an important provision which will enable appeals to be made to the Police Council where dissatisfaction is felt with decisions of police authorities on maximum limits. This entirely new departure is evidence of the goodwill of the employers, who are surrendering some of their previous local autonomy, and will no doubt be valued by the police accordingly.

The case of the owner-occupiers obviously required review, particularly as there are at present differences in treatment between the police and other services. For example, whereas the maximum police allowance is 125 *per cent*. of gross Schedule A value, a fire service owner-occupier receives, subject to a limit of one-sixth of his maximum pay, the amount assessed by the district valuer as a fair rent of the property he owns. The problem is more important in the county boroughs where changes of dwelling are infrequent as compared with the counties. The latter have had to build relatively many more police houses than the cities and boroughs at considerably greater cost than would have been incurred had allowances been paid instead, for at present the annual cost of providing and maintaining a house for a constable is about £200. It may be thought that the Rent Act of this year provides a suitable basis, and that accordingly it would have been a suitable solution to give owner-occupiers up to 2½ times the gross rateable value of their houses plus rates. Alternatively, it might have been argued that the present basis of gross Schedule A should be continued with an uplift of the percentage. In the result the fire service method has been adopted, rightly we think. It is more direct and must be more accurate.

Compensation for income tax payments on rent allowances continues. We understand the reasons which led to the introduction of compensatory grants but it must be admitted that special concessions of this kind are not looked at with enthusiasm or favour by the vast majority of taxpayers and ratepayers who are themselves liable for income tax on the whole of their remuneration. The Royal Commission* on the Taxation of Profits and Income drew attention to the growing tendency of employers to provide their employees with untaxable benefits in kind, and to the possibility of having to provide at some time in the future that specified types of such benefits should be regarded as taxable income. The police have now submitted a new pay claim, and it is not unlikely that the continuance of this concession may come under review. It is a considerable benefit to some. In the case of an inspector on his maximum salary and receiving rent allowance of 47*s*. 6*d*. per week, assuming he is married and has two children, the benefit is worth between £44 and £76 a year.

* Cmd. 9474.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Jenkins, Parker and Pearce, L.JJ.)

JONES *v.* MERSEY RIVER BOARD

October 8, 1957

River Board — Land Drainage — Dredging river — Dredgings deposited on adjoining land—"Without making payment therefor, or giving compensation in respect thereof . . . may deposit any matter so removed on the banks of the watercourse" or "use it in any other manner for the maintenance or improvement of those banks"—Construction—Land Drainage Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 44), *s.* 38 (1), *s.* 81.

CASE STATED by the Lands Tribunal.

A landowner claimed compensation from the Mersey River Board in respect of matter dredged by the board from a river adjoining his land, and then deposited on his land by the board. The board denied liability and relied on the exclusion of compensation contained in s. 38 (1) of the Land Drainage Act, 1930, which provides: "A drainage board, without making payment *therefor* or giving compensation in respect *thereof*, may appropriate and dispose of any shingle, sand, clay, gravel, stone, rock or other matter removed in the course of the execution of any work for widening, deepening or dredging any watercourse, and may deposit any matter so removed on the *banks* of the watercourse or use it in any *other* manner for the maintenance or improvement of those *banks* or for the purposes of the execution of any other work which the drainage board have power to execute." On appeals against the decision of the Lands Tribunal on certain preliminary points of law as to the construction of s. 38 (1),

Held: the effect of the words of s. 38 (1) which are printed in italics above was as follows:

(i) "therefor" and "thereof" referred only to the "matter removed in the course of the execution of" the work referred to in the subsection, and, therefore, the subsection only excluded a claim to compensation in respect of the taking of such matter, and did not exclude any right to compensation which might arise from the deposit or use of the matter so taken.

(ii) "banks" meant so much of the land adjoining or near to a river as performed or contributed to the performance of the function of containing the river.

(iii) "other" limited the permitted deposit on the banks to a deposit which in fact contributed to the maintenance or improvement of those banks.

Counsel: *Squibb, Q.C.*, and *K. W. Dewhurst* for the landowner; *Rowe, Q.C.*, and *R. H. Mais* for the Mersey River Board.

Solicitors: *Ellis & Fairbairn; Norton, Rose & Co.* for Clerk to Mersey River Board, Warrington.

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

When Parliament reassembled, the Earl of Lucan, on behalf of Lord Douglas of Barloch, asked the Government in the House of Lords whether there was any means by which justices of the peace appointed to act as judicial authorities under the Lunacy Acts, 1890 to 1911, and the Mental Deficiency Act, 1913, could be compensated for injuries inflicted by mental patients whom they interviewed in the course of their duties.

For the Government, Lord Chesham replied that he knew of no statutory authority for paying compensation to a justice of the peace for injuries sustained in the circumstances mentioned, or in the performance of any of the other duties which fell to the lot of justices of the peace. So far as Her Majesty's Government were aware, no need had yet been felt for any such provision, which would in any case call for legislation.

In the Commons, Mr. Desmond Donnelly (Pembroke) asked the Secretary of State for the Home Department whether he would make a statement on Her Majesty's Government's policy towards the report of the committee on the laws affecting homosexuality and prostitution.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that the Government welcomed that logical and clear report and were grateful to Sir John Wolfenden and his colleagues for the manner in which they had performed a most difficult task.

They were giving consideration to the reactions to the report. In view of the nature of the problem involved it was important to take account of public opinion and particularly of any views that might be expressed by Members of the House, before coming to any final conclusions on the committee's recommendations.

YOUNG OFFENDERS

Mr. H. Hynd (Accrington) asked the Secretary of State for the Home Department whether he had been able to consider the Report of the Advisory Council on alternatives to short terms of imprisonment; and what action he proposed to take on the Council's recommendations.

Mr. R. A. Butler replied that he was anxious to implement as soon as possible the Council's recommendation that an experimental attendance centre should be set up for male 17–21 year olds; and inquiries were now being made to see where one could most usefully be established. The provision of a remand centre was also high among their priorities. Clerks to justices had been asked to bring to the justices' attention those proposals which concerned the practice of the courts. The other proposals were receiving attention, but they involved legislation, about which he could not at present make any statement.

NOTICES

The next court of quarter sessions for the borough of Andover will be held on Tuesday, November 12, 1957.

The next court of quarter sessions for the city of Coventry will be held on Thursday, November 21, 1957, at the County Hall, Coventry, commencing at 11 *a.m.*

The next court of quarter sessions for the city of Winchester will be held on Thursday, November 28, 1957, at the Guildhall, Winchester, commencing at 10.45 *a.m.*

The next court of quarter sessions for the city of Hereford will be held on Friday, November 29, 1957, at the Shirehall, Hereford.

CORRECTION

Rent Acts Manual, by Ashley Bramall. The publishers of this work, which was reviewed on p. 696, have drawn our attention to a misprint in the price. This should have been 37*s.* 6*d.*, not 3*s.* 6*d.*, as printed. For this error, we apologise.

MISCELLANEOUS INFORMATION

LOANS SANCTIONED—SIX MONTHS TO SEPTEMBER 30, 1957

The total of loans sanctioned by the Minister of Housing and Local Government to local authorities in England and Wales during the year 1956–57 was £457 million. In the six months to September 30, 1957, the total was £247 million or an annual rate of £494 million. The following table analyzes the total for the half year and compares sanctions with the corresponding period of 1956:—

Purpose	*Half year ended*	
	September 30, 1956	*September* 30, 1957
	£ m.	£ m.
Housing (Land, dwellings, roads, sewers, etc.)	96	122
Advances and Grants under Housing and S.D.A. Acts	33	32
	129	154
Sewerage, sewage disposal and water supplies	23	24
Education	50	50
Miscellaneous	20	19
	£222	£247

It will be noticed that all services in the current financial year are about on the same monetary level as previously, with the exception of housing. The September quarter of last year had an unusually low figure which accentuates the difference, but even after allowing for this factor sanctions for housing in the current financial year have so far been issued at a higher rate than in in 1956–57. It remains to be seen whether the rest of the year will continue at the same pace or whether high interest rates and other factors will bring about the building slump envisaged by the Secretary of the National Housing and Town Planning Council: he has prophesied a fall of the annual rate of house building of all kinds to 100,000 by next summer.

The Chancellor of the Exchequer may have announced expected capital cuts by the time this note appears: it is not beyond possibility that even parts of the education service may not altogether escape the axe.

The services classified as minor from a financial angle have continued to suffer restriction. Total loans sanctioned for the requirements of the children, fire, police and highways services all show reductions in the current period. There is a very large fall in police housing and in highways expenditures. The needs of the police for houses may well be on the way to satisfaction: unfortunately such a reason is entirely inapplicable to the highways capital programme about which there is ittle satisfaction of any kind.

KENT WEIGHTS AND MEASURES DEPARTMENT

The complications of present day legislation relating to the sale of food is strikingly illustrated in the annual report of Mr. S. Strugnell, chief inspector to the Kent county council, who writes: "An instance of how difficult it is to apply even fairly recent legislation to modern trading practice is shown concerning the sale of pre-packed frozen meat. A pre-packed 'mixed grill' may consist of bacon, liver, steak, chop, sausage and kidney. The Sale of Food (Weights and Measures) Act, 1926, requires the weight of the butchers' meat, *i.e.*, the steak and the chop, to be stated individually, the Sale of Food (Weights and Measures: Bacon and Ham) Regulations, 1956, says that the net weight of the bacon must be given, the Pre-Packed Food (Weights and Measures: Marking) Order, 1950, demands a statement of the net weight of the entire contents. The container must also show whether the meat is of Empire or foreign origin. The Labelling of Food Order makes it necessary to state the ingredients making up the "mixed grill" and to state them in order of proportion. The object of statements on a food container is to give protective benefit to the purchaser but this benefit is likely to be lost if the statements are both numerous and confusing. A compromise has been agreed for the "mixed grills" sold in this county whereby only one weight declaration is asked for but how far this is legally correct is doubtful."

Out of 11,270 weights tested 244 were incorrect. Of 2,050 weighing instruments tested 185 were found to be incorrect. In the case of heavy capacity weighing machines out of a total of 211, 35 were found to be incorrect.

While Mr. Strugnell is of opinion that most coal dealers are honest, he thinks they might exercise more supervision over their staff, especially by insisting where a weighbridge is available, that each loaded lorry is checked for weight before it leaves the depot, and by arranging for the bags to be counted to ensure that the number on the vehicle agrees with the number stated on the delivery notes. Shortage of weight is sometimes due to carelessness on the part of the men. As many are paid on a tonnage basis it can mean extra money if bag filling can be speeded up by guessing the weight instead of weighing each bag. In some cases, however, it is due to dishonesty, and in one case it was revealed that men had been making up to £1 10*s.* a day by giving short weight and selling what they had abstracted.

Like other inspectors, Mr. Strugnell disapproves of the scale which has a price/weight chart on the seller's side but not on the customer's. He suggests that after a reasonable period all new weighing machines should be fitted with a weight/price chart on the buyer's side as well as on the seller's side. An immediate improvement could be effected by a card fixed on the customer's side of the scale showing a reasonable range of prices per pound and per ounce.

How vigilant inspectors need to be is illustrated by the following, which refers to sand and ballast: "In dealing with this type of trade it is necessary to ensure that the conveyance note shown to an inspector is, in fact, handed in when the load is delivered. It is not unknown for a lorry driver to have two tickets for one load; one for the inspector and one for the customer. To overcome this risk the inspector notes details of the ticket shown to him and later checks or, to save mileage and time if delivery is outside his area, asks his colleague to check that the same ticket was handed in at the place of delivery."

It is pointed out in the report that the modern housewife no longer uses corrosive acids for cleaning drains and lavatories, and it criticizes the position under the existing law. "Strict precautions were necessary to control the storage and sale of all poisons when the Act was passed nearly 25 years ago. Requirements as to labelling and containers are still necessary precautions, but it seems an unnecessary waste of time and money to make a trader fill in forms and register or re-register year after year because he stocks half-a-dozen bottles of household disinfectant or a few bottles of comparatively weak ammonia cleaning solution To this must be added the work and time of officials dealing with registrations and of the inspector who has to see why premises registered last year for housing six bottles of disinfectant have not been re-registered this year."

The report of the county analyst shows that of 1,177 samples taken of milk and cream, 64 were unsatisfactory. Of 309 samples taken of sugar confectionery, etc., 47 were unsatisfactory. A sample classified as unsatisfactory may, however, have been so described because of some minor defect or because of a labelling irregularity.

RESTRICTIVE PRACTICES REPORTS

The Incorporated Council of Law Reporting for England and Wales have agreed with the Treasury Solicitor to publish a separate series of reports of cases under the Restrictive Trade Practices Act, 1956. The practice hitherto has been for the Council to publish general series of reports and for Government departments to publish their own special reports—such as *Tax Cases*—on matters of vital interest to them, but in view of the special position of the Restrictive Practices Court it was considered that the independent body of trained reporters which the Council has established should be responsible for recording the Courts' decisions. The President of the Board of Trade has already emphasised in Parliament "the certainty which it is necessary for industry to have so that these great decisions are not at the whim of some political phase or change each week or month." They were trying "to establish a solid body of case law upon the basis of principles laid down by Parliament." The object of the new arrangement is to facilitate that end.

Under the Act the Restrictive Practices Court in England, Scotland and Northern Ireland will investigate all agreements which the Act requires to be registered to decide whether or not the restrictions in them are contrary to the public interest. About 1,500 agreements are on the register.

The new series of law reports will include not only decisions of that Court but also decisions of the High Court under the Act, and any appeals from such decisions.

"LATIN, QUEEN OF TONGUES"

Ben Jonson records of Shakespeare that he had "small Latin and less Greek," but then Ben was a prodigious scholar himself, and his words must be understood in a relative sense. Science is the favourite today, and a classical education is becoming a rare accomplishment. Gone are the rolling periods of Cicero that used to be quoted, in a reverent hush, in the House of Commons ; gone are the clipped aphorisms of Tacitus, the majestic hexameters of Vergil and Ovid, the epigrams of Horace and Martial. All that are left are a few legal maxims reference to which is confined almost exclusively to the leisurely proceedings of the Chancery Division and the text-book writers, and even these are pronounced in that barbarous manner of the older public school —the musical words of a Mediterranean language spoken as though they were English, and Cockney at that. And their grammar is as revolting as their pronunciation—what Roman would ever use the phrase "mens rea" to mean "a guilty mind?" What Roman, for that matter, would pronounce the maxim *quicquid plantatur solo, solo cedit,* enunciating *solo* as if it referred to a card-game and *cedit* as if it ought to rhyme with "feed it"? One is forcibly reminded of the Reverend Richard Barham, better known as Thomas Ingoldsby, who in his *Lay of St. Dunstan* (relating to the friar who called up the Devil to bring him beer until he drowned in it) made fun of the monkish dog-latin of the middle ages:

> In vain did St. Dunstan exclaim *Vade retro*
> *Strongbeerum discede a Lay—fratre Petro!*
> Queer Latin, you'll say, that prefix of *Lay;*
> And *Strongbeerum!*
> *I own they'd have called me a blockhead if*
> *At school I had ventured to use such a Vocative!*

Gone we said, are the classical quotations; for the first time in fifteen hundred years Latin is becoming a dead language, and with the humanities humanity itself is going out of existence. Going?—not altogether, for the use of Latin, if it can be called such, is preserved, of all unlikely places, in the jargon of the medical profession. True, it is not the Latin of the Classical Augustan Age, but a decadent set of formulas, twisted to suit the writing of prescriptions and the labelling of jars in the dispensary. What classical scholar would use the word *mitte* in the sense of "supply" and what would *Pot. Brom.* convey to Celsus or Galen? But the use of bad Latin helps to surround the craft with an atmosphere of estoteric lore, analogous to the marking of little bottles and boxes delivered to patients, with inscriptions like—"The Mixture—to be taken as directed," "The Powder" or "The Capsules." God forbid (as the robust Elizabethans would say) that the ignorant patient should get any inkling of what ingredients they are composed of, or that he should ask and be answered any questions concerning their purpose and effect. The result is that, within a few months, he finds his bathroom cupboard full of drugs in containers which in their studied anonymity defy his memory and his curiosity alike. If he is a wise man, he will pour the whole lot down the drain, and resolve next time to mark the bottle or jar, or whatever it is "For insomnia," "For migraine" or with some such practical sounding words, enabling him to resort to the medical aid on the next occasion when he requires it, without wasting hours in the consulting room.

An example of the obscurantist methods employed by the medical profession in this country, which often savours more of the African witch-doctor than of the members of the great Guild of Healing, comes from Bristol. Before the magistrates (says the *Western Daily Press*) was a woman defendant, accused of "fraudulently demanding property from a pharmacist by means of a forged prescription." This unfortunate, like many of us, suffered from sleeplessness, and she got a prescription from a local doctor containing the usual rigmarole and directing the chemist to give her 25 tablets of sodium amatol. The prescription concluded with the words "1 *nocte*"—one to be taken at night. The patient was a strong minded woman, who knew what she wanted. Not only did she alter the figures "25" in the prescription to "45"—which was naughty of her—but she crossed out "1 *nocte*" on the grounds that "I know this nocte, or noste, or whatever it is, is part of the drug and I feel much better without. I like it better without that, and I feel much better too!" She freely admitted the alteration which she had made "to bring the matter to the notice of the authorities," and was fined £1.

This real life episode reminds us of the woman who sat next to a learned gentleman at a literary dinner. To make conversation he turned to her, during the fish-course, and asked her, "Do you like Omar Khayyam?" "Yes," she replied, "but I always prefer Chianti." When she got home that night she repeated the conversation to her elder and more knowledgable sister. "How silly of you!" said the latter, "Omar Khayyam is not a wine at all, it is a cheese!" (Bristol newspapers please copy.)

A.L.P.

PERSONALIA

The Queen has signified her intention of making the following appointments to county court Judges: His Honour Judge Meurig Evans to succeed His Honour Judge Ernest Evans, Q.C., as the Judge for Circuit 29 (North Wales); His Honour Judge Nicklin to succeed His Honour Judge Forbes as the Judge for Birmingham county court.

Mr. Warwick Waghorn Sayers has been appointed deputy clerk of the peace for the county of London. Mr. A. R. Guns has been appointed assistant deputy clerk of the peace.

Mr. John Desmond Seys Llewelyn, M.A. (Oxon), has been appointed whole-time justices' clerk to Bromfield and Wrexham, Denbighshire, petty sessional divisions, to succeed Mr. Edgar Leonard Bradley. Mr. Seys Llewelyn was educated at Jesus College, Oxford, was called to the bar by the Inner Temple, 1945, and joined the Wales circuit. He served in the Royal Tank Regiment for six years during the war with the rank of Captain. Mr. Llewellyn took up his duties on November 8, last. Mr. E. D. Bradley, M.A. (Hons., Cantab.), was appointed clerk to the justices at Wrexham on December 30, 1953; he was called to the bar by the Middle Temple, 1940. At a recent conference of the National Justices' Clerks' Society, he was elected a member of the Society's Governing Council, and he is also secretary of the Cheshire and North Wales Justices' Clerks' Society; he leaves Wrexham on November 17, next, to take up his new appointment as clerk to the Poole justices.

Mr. John Spencer, who has been clerk of Wainford, East Suffolk, rural district council since 1953, has been appointed clerk to Devizes, Wiltshire, rural district council. He will take up his new post in December. Mr. Spencer was a clerk with South Mimms, Hertfordshire, rural district council, before being appointed clerk to Royston, Hertfordshire, urban district council in 1947.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Child subject of custody order by High Court.*

In 1951 M and F were divorced and decree absolute made. There was one child of the marriage, custody of whom was given to M (the mother) the order being that the child "do remain in the custody of the petitioner until further order of the Court." In fact the child is living with M's parents who now wish to adopt it. M consents but the whereabouts of F is unknown and it is intended to ask the Court to dispense with his consent. The grandparents wish to make their application to the justices. In view of the existing order of the High Court as to custody is this a case where the magistrates ought to decide under r. 14 of the Adoption of Children (Summary Jurisdiction) Rules, 1949 and 1952, that the application to adopt ought to be made to the High Court and not to the magistrates ?

QUOFOR.

Answer.

In our opinion the existence of a custody order made by the High Court would not constitute special circumstances which would justify the magistrates in refusing to make an adoption order on the ground that the case appeared to them more fit to be dealt with by the High Court.

A direction of Lord Merriman, P., which is reproduced in *Rayden on Divorce*, 2nd supp. to 5th edn., p. B. 63, makes it clear that an adoption application can be dealt with in the ordinary way by a magistrates' court notwithstanding the custody order. This direction was considered and followed in *Crossley* v. *Crossley* [1953] 1 All E.R. 917; 2nd Digest Supp.

2.—Children and Young Persons—*Young person feeble-minded —Charge of sacrilege—Procedure—Order under s. 8, Mental Deficiency Act*, 1913.

I understand that a child aged 14 years is to be charged with sacrilege, having broken and entered a place of divine worship. The child has been excluded from school as ineducable and in 1956 the school medical officer of health completed a medical report and form of application for admission to an institution for defectives. In this report the school medical officer of health was of the opinion that the boy was feeble-minded. I understand that while the father at one time consented to him being sent to an institution for defectives he has now withdrawn his consent.

I shall be grateful for your advice on the following:

1. If it is found that the child is unfit to plead has the court jurisdiction to deal with him and, if so, what course can the court take if the charge is proved ? It is assumed that the court could remand him for medical examination under s. 26 of the Magistrates' Courts Act, 1952.

2. Can the court make any order under s. 8 of the Mental Deficiency Act, 1913 ? Would a medical report from the remand home if he should be remanded, be sufficient evidence for this purpose ? It appears that there is no available vacancy at present at an institution for defectives for this area. If this is so, what order can the court make ?

KORMOK.

Answer.

It seems a great pity that the matter has to be dealt with by a charge being preferred, but if this is done, then before a charge of sacrilege can be tried in a juvenile court, the young person's consent must be obtained by the procedure laid down in s. 20 of the Magistrates' Courts Act, 1952. Unless the court is satisfied that he is able to understand this procedure and to give a valid consent that court has no jurisdiction to try the case but must take the evidence, and, if a *prima facie* case is made out, commit him for trial.

Should he be able to give a valid consent, he would probably also be able to plead to the charge when it is properly explained to him. If he pleads not guilty the case can be tried and, if it is found proved, there can be a remand for a medical report. If the necessary medical evidence is forthcoming an order can be made under s. 8 of the Mental Deficiency Act, 1913, but the doctor must attend to give evidence. The court cannot act on his written report.

If there is no vacancy in an institution the court might consider making a fit person order naming the local authority as the fit person.

3.—Criminal Law—*Offences against the Person Act*, 1861, *s.* 42—*Power to order imprisonment in default of payment of fine.*

A is charged by B with assault and battery contrary to s. 42 of the Offences against the Person Act, 1861.

A failed to appear and on proof of service of summons and that an adjournment had come to his notice, the charge was heard in his absence and he was convicted. My justices fined him £5, ordered him to pay £8 8s. costs and appointed one month for payment, but if not paid, one month's imprisonment unless such fine and costs be sooner paid.

Section 42 requires no reasons to be stated and none were, though in fact the offence was a grave one. It seems clear, but immaterial, that the court had power to sentence A in his absence to up to two months' imprisonment for the offence.

The following questions now arise :—

1. Was the court prohibited from imposing a sentence of imprisonment in default of payment of the fine and costs in the offender's absence by the Magistrates' Courts Act, 1952, s. 69 (3), or does the specific power to imprison in default of payment contained in the Offences Against the Person Act, 1861, s. 42, override this prohibition ?

2. If the court was not competent to impose the prison sentence, is the part of the sentence in which it did not exceed its powers relating to the fine and order to pay costs valid ?

3. If so, would the proper course be, if the fine and costs are not paid within one month, to ignore the prison sentence and issue a summons for a means inquiry ?

4. In that case would the correct course be for me as clerk when giving the defendant notice of the sentence merely to state that one month was allowed for payment and to omit any reference to imprisonment in default ?

5. Generally what should be done, if anything, to rectify the mistake if one has been made ?

MORANA.

Answer.

1. Section 69 (3) does prohibit the imposition of a sentence of imprisonment, in the absence of the defendant, when time to pay is allowed.

2. We think that on the authority of *R.* v. *Willesden Justices, ex parte Utley* [1947] 2 All E.R. 838 and the cases therein cited this conviction is bad and cannot be amended. The only authority which can be cited to suggest that it could be amended by omitting the reference to one month's imprisonment is *Chepstow Electric Light and Power Co., Ltd.* v. *Chepstow Gas and Coke Consumers Co., Ltd.* (1905) 69 J.P. 72. We do not think in any event that the magistrates' court can amend its own conviction. In hearing the case the court acted with full jurisdiction but its own adjudication, as in *Utley's* case (*supra*), was in excess of jurisdiction.

4. No, we think that the notice of fine should agree with the actual adjudication.

5. If the defendant does not appeal and pays the fine within the time allowed we do not think any further action is called for, but if he does not pay we do not think that the court should proceed to enforce payment under this conviction.

4.—Highway—*Cost of repair of damaged pavement.*

Adverting to P.P. 6 at p. 458, *ante*, it may be helpful to observe that I have found it convenient to deal with such instances under s. 72 of the Highway Act, 1875, which provides a penalty, for every offence, not exceeding 40*s.* above the damage occasioned thereby. One appreciates that this procedure bars subsequent civil action, but I find that the local authority is usually quite happy to be reimbursed by this means.

BOTEL.

Answer.

The query at p. 458 was about the civil remedy, which the querist evidently intended pursuing, and we were only concerned to discuss that remedy. We are much obliged for this reminder of s. 72, and agree.

5.—Magistrates—*Jurisdiction and powers—Appeal to quarter sessions against an order under s.* 8 (1) (*b*) *of the Mental Deficiency Act*, 1913.

We should welcome your opinion as to the right of appeal against an order under s. 8 (1) (*b*) of the Mental Deficiency Act, 1913, as amended.

A youth is convicted, but in lieu of passing sentence the magistrates, finding him to be a feeble minded person, make an order under the above section sending him to a local mental hospital. The youth then appeals to quarter sessions, against sentence only.

Such appeal is brought under s. 31 of the Summary Jurisdiction Act, 1879, as substituted by the Summary Jurisdiction (Appeals) Act, 1933, which contains the phrase "conviction, sentence, order, determination or other decision . . ." though this is qualified by the preceding words of the section "when a person is authorized by or under any Act . . ." It therefore seems necessary to refer back to the Mental Deficiency Act, to find what right of appeal this gives, s. 61 allowing this to be done in the case of any person aggrieved by the "conviction or sentence of a court of summary jurisdiction." An order under s. 8 (1) (*b*) of the Mental Deficiency Act, 1913, seems to be neither of these, the section itself opening "in lieu of passing sentence . . ."

By the Magistrates' Courts Act, 1952, s. 83 (3) the expression "sentence" is to include any order, but "made on conviction."

Section 8 (1) (*a*) of the Mental Deficiency Act, 1913, was the basis of an appeal in *R.* v. *Bexon* (1952) 36 Cr. App. R. 7, but on quite different facts, and without the foregoing point arising.

Is there any right of appeal when a court of summary jurisdiction "in lieu of passing sentence . . ." makes an order under s. 8 (1) (*b*)? Y. GERO.

Answer.

The parts of s. 31 of the Summary Jurisdiction Act, 1879, as substituted by the Summary Jurisdiction (Appeals) Act, 1933, remaining in force relate to the powers of quarter sessions on appeal.

Section 61 of the Mental Deficiency Act, 1913, does not apply to this case. That section gives a right of appeal in cases where persons are convicted and sentenced for offences *under* that Act.

The right of appeal against the order following upon conviction in this case is given by s. 83 of the Magistrates' Courts Act, 1952. In sub-s. (3) of that section "sentence" is defined so as to include "any order made on conviction," except those orders excluded by paras. (*a*), (*b*), (*c*) and (*d*) of the sub-section. There is therefore a right of appeal against an order made on conviction under s. 8 (1) (*b*) of the Mental Deficiency Act, 1913, as that is not one of those orders excluded.

To quote the important words, s. 8 (1) (*b*) reads "On the conviction . . . the court . . . may . . . (*b*) . . . make any order . . ." An order, made following conviction, under s. 8 (1) (*b*) of the Mental Deficiency Act, 1913, is therefore an "order made on conviction" within the meaning of s. 83 (3) of the Magistrates' Courts Act, 1952.

6.—Magistrates—*1. Practice and procedure—Changing regular day of sitting. 2. Appointment—Method of securing appointment of new justices for a petty sessional division of a county.*

I shall be obliged if you will let me have your observations upon the following points:

1. The correct procedure, if there is any, to amend a court sitting day from one day of the week to another as a permanent arrangement.

2. The correct procedure for the appointment and the initiation of the suggestion of the appointment of new justices for a county division. In this connexion, who or what body of persons recommends the names of suggested new justices? JUSSO.

Answer.

1. There is no procedure laid down. Justices can sit in the petty sessional court house when it is convenient. It would no doubt be helpful to those affected if an announcement of the change were made by the chairman at a sitting of the court, so that it could be noted in the local press and a notice could be posted in a prominent place in the court building.

2. There is an advisory committee, of which the Lord Lieutenant of the county is chairman, which makes recommendations to the Lord Chancellor when it is thought that fresh appointments to the Commission of the Peace for a county should be made. The Lord Lieutenant can probably give further information on the matter.

7.—Probation—*Further offence after offender attains* 17.

With reference to your answer to P.P. 12 at 120 J.P.N. 474, does not s. 48 (2) of the Children and Young Persons Act, 1933, provide a solution to the problem? Y. FARO.

Answer.

Section 48 (2) of the Children and Young Persons Act, 1933, does not confer any power on the juvenile court to deal with a probationer, and in particular does not indicate how that court should deal with a probationer, now over 17, "as if it had just convicted him" of an offence of breaking and entering.

In the absence of authority to the contrary we are of the opinion that no court can deal with the original offence in the circumstances. This difficulty is discussed at some length in an article at 118 J.P.N. 573.

8.—Road Traffic Acts—*Insurance policy—Requirement to hold or to have held a driving licence—Army driving permit not a driving licence for this purpose.*

A is seen driving a motor lorry on a public highway and failed to produce his current driving licence. Subsequent inquiries made showed that he did not hold a driving licence and had never held a civilian driving licence, but whilst serving in H.M. Forces had held an Army driving permit which is usually referred to as an Army driving licence.

The policy of insurance bears the usual clause as regards persons entitled to drive, *viz.*, "The policy-holder and any other person who is driving on his authority or with his permission, provided that the person holds or has held a licence to drive the vehicle, and is not disqualified from holding or obtaining such a licence."

Does the fact that the driver has held an Army driving licence qualify him as an "insured person"? He has no other disqualifications. LEDARC.

Answer.

We answered similar questions at 114 J.P.N. 561 (P.P. 10) and 121 J.P.N. 80 (P.P. 13). A permit to drive Army vehicles is *not*, in our view, a driving licence within the meaning of the clause in the insurance policy.

9.—Road Traffic Acts—*"Police—No Waiting" notice under s.* 38 *of the Act of* 1956—*Failure to comply as offence against s.* 49 *of the Act of* 1930.

The police, in accordance with their powers under s. 38 of the Road Traffic Act, 1956, place "Police—No Waiting" notices in a town in this county on a market day, which is considered to be a case for extraordinary traffic conditions. The notices are of the size, type and colour as prescribed by the Traffic Signs Regulations and General Directions of 1957.

A motorist parks his car close to one of these signs. Can the police enforce this disregard of the notice under s. 49 of the Road Traffic Act, 1930, or does reg. 5 of the above Traffic Directions forbid this? M. AJAX.

Answer.

Having regard to s. 35 (7) of the Act of 1956, which came into force on March 1, 1957, we think that a failure to comply with the indication given by the sign is an offence against s. 49, *supra.*

10.—Shops—*Shops Act,* 1950, *s.* 17 (1)—*Bank Holidays and the weekly half-holiday.*

Is the benefit of the proviso to this subsection obtained when, in the week, say, which includes Whit-Monday, a shop assistant is not employed on that bank holiday, and, in addition, has his normal half-holiday on Tuesday? Alternatively, is it an obligation of the shopkeeper who wishes to secure the benefit of keeping the shop open on the Tuesday afternoon in the week before Whit-Monday, that he should give his assistant a further half-holiday in addition to the day and a half already described? Y. F. THIM.

Answer.

"Week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night (s. 74 (1)).

The proviso to s. 17 (1) means that the weekly half-holiday need not be given in the week preceding a bank holiday, if a half-holiday is given in addition to the bank holiday in the week in which the bank holiday falls.

The answer to the first question is therefore, "Yes," and to the second, "No."

11.—Small Dwellings Acquisition Act, 1899—*House already acquired*

An advance was made by the council in August, 1952, and the mortgagee has now applied for a further advance, to be repaid over the remainder of the term of the original mortgage. Having regard to the provisions of s. 1 (1) of the Small Dwellings Acquisition Act, 1899, I am doubtful of the power of the council to make the further advance, and I shall be glad to know if you agree that in the circumstances the council have no power. PANNO.

Answer.

The council have no power to lend under the Act of 1899 where the house has been already acquired. Section 4 of the Housing Act, 1949, might authorize a further advance if the facts came within that section.

BOUND AND UNBOUND VOLUMES OF THE J.P.

From time to time, inquiries are received from subscribers for back volumes of this Journal and of the Reports, to complete their sets. Not always has it been possible for a quotation to be made, but recent purchases enable us to offer the following volumes, **for immediate delivery**, at the prices stated.

1841	R. & R.	HC	Soiled	£3 10
		CL	Damaged	£3 10
1842	do.		Good	£3 10
		HC	Badly Damaged	£2 15
		CL	Soiled	£3
1843	do.	HC	Damaged	£3
1844	do.	UNB	Incomplete	£2
1845	do.		Damaged	£3
		HC	Badly Damaged	£2 10
1846	—	—	—	—
1847	do.	do.	Badly Damaged	£3
1848	do.	do.	do.	£3
1849	do.	do.	do.	£3
1850	do.	do.	do.	£3
1851	do.	do.	do.	£3
1852	do.	do.	do.	£3
1853	do.	do.	do.	£3
			Good	£3 10
1854	do.	do.	Damaged	£3
			Good	£3 10
1855	do.	do.	Damaged	£3
			Good	£3 10
1856	do.	do.	Good	£3 10
			Damaged	£3
1857	do.	do.	Damaged	£3
			Badly Damaged	£2
1858	do.	do.	do.	£3
1859	do.	do.	Good	£3
			Badly Damaged	£2
			Damaged	£2 15
1860	do.	do.	Damaged	£2 15
			Badly Damaged	£2
1861	do.	do.	Good	£3
			Damaged	£2 15
1862	do.	do.	Good	£3
			Damaged	£2 15
		UNB	Complete	£2 10
1863	do.	HC	Good	£3
			Badly Damaged	£2 10
		CL	Good	£3
1864	do.	HC	Damaged	£2 10
			Good	£3
		CL	Good	£3
		UNB	Complete	£2 10
1865	do.	HC	Good	£3 10
		CL	Soiled	£2 10
			Good	£3
1866	R. & R.	HC	Badly Damaged	£2 10
		CL	Good	£3
		UNB	Complete	£2 10
1867	do.	Misc	Badly Damaged	£2 10
		CL	Damaged	£2 10
		HC	Damaged	£2 10
1868	do.	HC	Good	£3 10
		CL	Good	£3 10
			Damaged	£2 15
			Damaged & Incomplete	£1 1
1869	do.	HC	Good	£4
		CL	Good	£3 15
1870	do.	HC	Good	£4
1871	do.	UNB	Complete	£2 10
		HC	Damaged	£3
		CL	do.	£3 5
1872	do.	HC	Badly Damaged	£3 5
		UNB	Incomplete	£1 1
1873	do.	HC	Damaged	£2 5
		UNB	Complete	£2 10
1874	do.	HC	Damaged	£2 5
1875	do.	HC	Good	£4
1876	do.	HC	Good	£4
1877	do.	UNB	Incomplete	£1 1
	do.	HC	Good	£4
			Damaged	£3
1878	do.	UNB	Complete	£2 10
	do.	HC	Good	£4
1879	do.	UNB	Incomplete	£1 1
	do.	HC	Good	£4
1880	do.	UNB	Damaged	£2 15
	do.	HC	Good	£3
1881	do.	HC	Good	£4
1882	do.	UNB	Complete	£2
		HC	Badly Damaged	£2 15
			Good	£3 10
1883	do.	HC	Good	£3 10
			Badly Damaged	£2 15
1884	do.	HC	Several pts. not bound Incomplete	£2
		CL	Damaged	£2 10
		Misc	do.	£3
		UNB	Incomplete	£1 1
1885	do.	HC	Good	£3 10
			Damaged	£2 10
			Badly Damaged	£2 10
		CL	Damaged	£2 10
		UNB	Complete	£2
1886	do.	HC	Good	£3 10
			Damaged	£2 10
		CL	Badly Damaged	£2 5
		UNB	Complete	£2
1887	R. & R.	HC	Damaged	£3
			Good	£3 10
		CL	Good	£2 10
		UNB	Complete	£2
1888	do.	HC	Good	£3 10
		UNB	Complete	£2
		CL	Badly Damaged	£2 5
1889	do.	HC	Good	£3 10
			Badly Damaged	£2 5
		CL	Damaged	£2 5
		UNB	Complete	£2
1890	do.	HC	Damaged	£2 5
			Good	£3 10
		CL	Damaged	£2 5
		Misc	Badly Damaged	£2 5
1891	do.	HC	Good	£3 10
			Badly Damaged	£2 5
			Damaged	£2 5
		CL	Damaged	£2 5
		Misc	Badly Damaged	£2 5
		UNB	Complete	£2
1892	do.	UNB	Incomplete	£1 1
		HC	Good	£4
			Badly Damaged	£2 10
1893	do.	HC	Badly Damaged	£2 10
			Good	£3 10
		CL	Damaged	£2 5
1894	R. & R.	HC	Good	£3 10
		CL	do.	£3
		UNB	Complete	£2
1895	do.	HC	Good	£3 10
			Damaged	£2 15
			Badly Damaged	£2 10
		CL	Good	£3
1896	do.	HC	Badly Damaged	£2 10
			Good	£3 10
		CL	Good	£3
		Misc	Damaged	£2 10
		UNB	Complete	£2
1897	do.	HC	Good	£3 10
		Misc	Damaged	£2 10
		UNB	Incomplete	£1 1
		CL	Good	£3
1898	do.	CL	Damaged	£2 5
		HC	Badly Damaged	£2
		HC	Good	£3 10
		Misc	Damaged	£2 5
			Good	£3
1899	do.	UNB	Incomplete	£1 1
		HC	Good	£3 10
		CL	Good	£3
		Misc	Damaged	£2 10
1900	do.	HC	Good	£3 10
		CL	Good	£3
		Misc	Damaged	£2 10
1901	do.	HC	Good	£3 10
		CL	do.	£3 5
		Misc	Damaged	£2 10
1902	R. & R.	UNB	Complete	£2
		HC	Good	£3 10
		CL	do.	£3 5
		Misc	Damaged	£2 10
1903	R. & R.	CL	Good	£3 5
		HC	Good	£3 10
	REV. O.	UNB	Complete	£2
			Badly Damaged	£2 10
		Misc	Badly Damaged	£2 10
	REP. O.	HC	Good	£2
1904	R. & R.	HC	Good	£3 10
			Badly Damaged	£2 10
		CL	Good	£3 5
			Complete	£2
		UNB	Incomplete	£1 1
	REV. O.	HC	Good	£2 10
		CL	Good	£2 5
		UNB	Complete	£1 10
		Misc	Damaged	£2
		HC	Damaged	£2
	REP. O.		Good	£2 5
		UNB	Complete	£1 10
1905	R. & R.	HC	Damaged	£2 10
			Good	£3 10
		CL	Damaged	£2 5
		UNB	Complete	£2
	REV. O.	HC	Good	£2 5
		CL	Good	£2
		UNB	Complete	£1 10
		Misc	Damaged	£2
	REP. O.	HC	Damaged	£2
		UNB	Complete	£1 10
1906	R. & R.	HC	Good	£3 10
		CL	Good	£3 5
	REV. O.	UNB	Complete	£1 10
		HC	Good	£2 5
		CL	Good	£2
		Misc	Good	£2
	REP. O.	CL	Good	£2
		HC	Good	£2 5
1907	R. & R.	HC	Good	£3 10
		CL	Good	£3
			Damaged	£2 10
		UNB	Complete	£2
	REV. O.	HC	Good	£2
			Damaged	£1 15
		UNB	Complete	£1 10
		Misc	Good	£1 10
	REP. O.	HC	Good	£2 5
1908	R & R.	UNB	Incomplete	£1 1
			Complete	£2
		HC	Good	£3 10
		CL	Good	£3
	REV. O.	Misc	Good	£1 15
		HC	Good	£2
	REP. O.	UNB	Complete	£1 10
1909	R. & R.	UNB	Complete	£2
			Badly Damaged	£2 15
		HC	Good	£3 10
		CL	Good	£3
1909	REV. O.	UNB	Complete	£1 10
		Misc	Good	£2
	REP. O.	HC	Good	£2 5
		UNB	Complete	£1 10
1910	R. & R.	HC	Good	£3 10
		CL	Good	£3
			Complete	£2
		UNB	Incomplete	£1 1
	REV. O.	CL	Good	£2
		UNB	Complete	£1 10
		Misc	Good	£1 15
	REP. O.	UNB	Complete	£1 10
		HC	Good	£2

ABBREVIATIONS: HC—HALF CALF; CL—CLOTH; UNB—UNBOUND; R. & R.—REVIEW & REPORTS; REV. O.—REVIEW ONLY; REP. O.—REPORTS ONLY; MISC.—MISCELLANEOUS BINDING

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